

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EARNEST MCMILLER,

Plaintiff,

v.

Case No. 17-C-1401

SHARON MOERCHEN, et al.,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Earnest McMiller, who is currently serving a state prison sentence at Kenosha Correctional Center, filed a complaint under 42 U.S.C. § 1983 alleging that his civil rights were violated while he was housed at Redgranite Correctional Institution. On February 27, 2018, Magistrate Judge Duffin screened his complaint and filed a Report and Recommendation. ECF No. 9. In that Report and Recommendation, the Magistrate Judge recommends that McMiller be permitted to proceed on a deliberate indifference claim against Defendants Sharon Moerchen and Cindy Barter, but that Defendants Jane Doe and Nurse Thompson be dismissed from this lawsuit because McMiller has not stated a claim against them. McMiller has not filed an objection to this recommendation. After careful consideration of the Report and Recommendation of the Magistrate Judge, as well as the record as a whole, the court adopts the Report and Recommendation of the Magistrate Judge. McMiller may proceed on his claims for deliberate indifference against Defendants Moerchen and Barter.

IT IS THEREFORE ORDERED that Defendants Jane Doe and Nurse Thompson are **DISMISSED** because the complaint fails to state a claim against them.

IT IS FURTHER ORDERED that pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being electronically sent today to the Wisconsin Department of Justice for service on the state defendants.

IT IS FURTHER ORDERED that, pursuant to the informal service agreement between the Wisconsin Department of Justice and this court, the defendants shall file a responsive pleading to the complaint within **sixty days** of receiving electronic notice of this order.

IT IS FURTHER ORDERED that the agency having custody of the prisoner shall collect from his institution trust account the \$339.65 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action. If the plaintiff is transferred to another institution, the transferring institution shall forward a copy of this Order along with plaintiff's remaining balance to the receiving institution.

IT IS FURTHER ORDERED that copies of this order be sent to the officer in charge of the agency where the inmate is confined.

IT IS FURTHER ORDERED that the parties may not begin discovery until after the court enters a scheduling order setting deadlines for discovery and dispositive motions.

IT IS FURTHER ORDERED that the plaintiff shall submit all correspondence and legal material to:

Honorable William C. Griesbach
c/o Office of the Clerk
United States District Court
Eastern District of Wisconsin
125 S. Jefferson Street, Suite 102
Green Bay, WI 54301

PLEASE DO NOT MAIL ANYTHING DIRECTLY TO THE COURT'S CHAMBERS. It will only delay the processing of the matter.

The plaintiff is further advised that failure to make a timely submission may result in the dismissal of this action for failure to prosecute.

In addition, the parties must notify the Clerk of Court of any change of address. Failure to do so could result in orders or other information not being timely delivered, thus affecting the legal rights of the parties. Therefore, failure to provide your correct address could result in dismissal of your case for failure to prosecute.

Dated this 27th day of March, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court